UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

ROBERT A. SHIRLEY,   )
)
            Petitioner,   )
)
v.   )   Case No. CIV-22-236-J
)
SCOTT CROW, Director,   )
)
            Respondent.   )

ORDER

Petitioner, Robert A. Shirley, a state prisoner appearing pro se, brought this action pursuant to 28 U.S.C. § 2254, seeking habeas relief from his state court convictions. [Doc. No. 1]. The matter was referred for initial proceedings to United States Magistrate Judge Gary M. Purcell consistent with 28 U.S.C. § 626(b)(1)(B),(C). [Doc. No. 3]. Judge Purcell issued a Report and Recommendation recommending that the Petition for Writ of Habeas Corpus be dismissed without prejudice. [Doc. No. 6]. Petitioner has filed an objection to the Report and Recommendation which triggers de novo review. [Doc. No. 7].

Petitioner objects to the Report and Recommendation in its entirety and asserts a fundamental miscarriage of justice. Having reviewed this matter de novo, the Court concludes Petitioner's claims are procedurally defaulted and Petitioner has not shown a fundamental miscarriage of justice. Accordingly, the Court ADOPTS the Report and Recommendation [Doc. No. 6] and DISMISSES the Petition for Writ of Habeas Corpus [Doc. No. 1] without prejudice.

Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, the Court must issue or deny a certificate of appealability (COA) when it enters a final order adverse to a petitioner. A COA may issue only if the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by

demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Petitioner has failed to make either showing and the Court denies the COA.

IT IS SO ORDERED this 26th day of April, 2022.

BERNARD M. JONES
UNITED STATES DISTRICT JUDGE